

Union Calendar No. 467

104<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 2392**

[Report No. 104-860]

**A BILL**

To amend the Umatilla Basin Project Act to establish boundaries for irrigation districts within the Umatilla Basin, and for other purposes.

SEPTEMBER 28, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1995

Mr. COOLEY introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER 28, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 21, 1995]

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## A BILL

To amend the Umatilla Basin Project Act to establish boundaries for irrigation districts within the Umatilla Basin, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited to as the “Umatilla Basin*  
 3 *Project Completion Act”.*

4 **SEC. 2. AUTHORITY TO COMPLETE THIRD PHASE OF**  
 5 **UMATILLA BASIN PROJECT.**

6       *The Umatilla Basin Project Act (102 Stat. 2791) is*  
 7 *amended by adding at the end the following new sections:*

8 **“SEC. 215. UMATILLA BASIN PROJECT PHASE III EXCHANGE.**

9       “(a) *AUTHORIZATION OF PROJECT CONSTRUCTION.—*

10 *(1) Effective upon the boundary adjustments under section*  
 11 *216(a), the Secretary is authorized to construct a third and*  
 12 *final phase of the Umatilla Basin Project to provide addi-*  
 13 *tional flows in the Umatilla River for anadromous fish*  
 14 *through a water exchange with Westland Irrigation Dis-*  
 15 *trict.*

16       “(2) *Prior to construction, the Secretary shall complete*  
 17 *a feasibility study to identify alternatives to provide*  
 18 *Westland Irrigation District and other Umatilla River*  
 19 *Basin water users with exchange flows of approximately*  
 20 *220 cubic feet per second to restore the Umatilla River fish-*  
 21 *ery, as determined through analysis in a feasibility study*  
 22 *under paragraph (3).*

23       “(3)(A) *The feasibility study for the Phase III ex-*  
 24 *change facilities shall examine engineering, environmental,*  
 25 *and economic factors associated with project alternatives,*  
 26 *including but not limited to: technical engineering and hy-*

1 *drologic analyses pertinent to the identification and design*  
 2 *of alternatives; biological analyses of instream flow levels*  
 3 *to optimize anadromous fish restoration; and assessment of*  
 4 *the best biological value per unit expenditure among the al-*  
 5 *ternatives.*

6       “(B) *The feasibility study shall also include an analy-*  
 7 *sis of inclusion of other irrigators in the exchange; consoli-*  
 8 *dation of irrigation delivery facilities; potential for vol-*  
 9 *untary water transfers; optimization of water delivery*  
 10 *scheduling for all four irrigation districts; appropriate*  
 11 *backup systems; water conservation opportunities; and such*  
 12 *other analyses as the Secretary may consider appropriate*  
 13 *to improve the exchange project for fishery restoration pur-*  
 14 *poses.*

15       “(4) *Prior to completion of Phase III facilities, the*  
 16 *Secretary shall negotiate and execute an exchange agree-*  
 17 *ment with the Westland Irrigation District to allow the use*  
 18 *of Columbia River water in exchange for an equivalent*  
 19 *amount of Umatilla River or McKay Reservoir water. Ad-*  
 20 *ditional exchange agreements with other water users may*  
 21 *be executed either before or after the completion of Phase*  
 22 *III. The exchange agreement shall incorporate water deliv-*  
 23 *ery scheduling optimization, conservation, water transfer,*  
 24 *and other technical operational measures recommended in*  
 25 *the feasibility study.*

1       “(b) *OPERATION AND MAINTENANCE COSTS.*—All ex-  
 2   change system operation and maintenance costs and any  
 3   increased operation and maintenance costs to the project  
 4   caused by the Phase III exchange shall be the responsibility  
 5   of the Federal Government and shall be nonreimbursable.

6       “(c) *POWER FOR PROJECT PUMPING.*—The Adminis-  
 7   trator of the Bonneville Power Administration (hereinafter  
 8   in this subsection referred to as the ‘Administrator’), con-  
 9   sistent with provisions of the Columbia River Basin Fish  
 10   and Wildlife Program established pursuant to the Pacific  
 11   Northwest Electric Power Planning and Conservation Act  
 12   (94 Stat. 2697), shall provide for project power needed to  
 13   effect the Phase III water exchange for purposes of mitigat-  
 14   ing anadromous fishery impacts. The cost of power shall  
 15   be calculated as an offset to the Administrator’s annual  
 16   Treasury payments for operation and maintenance of the  
 17   Federal Columbia River Power System.

18       “(d) *INTEGRATION AND COORDINATION OF FACILI-*  
 19   *TIES.*—Project facilities authorized by sections 215 through  
 20   219 shall be integrated and coordinated into the existing  
 21   Umatilla Basin Project.

22   **“SEC. 216. UMATILLA BASIN IRRIGATION DISTRICTS**  
 23       **BOUNDARY ADJUSTMENT.**

24       “(a) *IN GENERAL.*—(1) Effective upon completion of  
 25   environmental reviews and approval by the Secretary, the

1 *boundaries of the Umatilla Basin Project irrigation dis-*  
2 *tricts are adjusted by operation of law as follows:*

3           “(A) *Hermiston Irrigation District’s boundaries*  
4           *are adjusted to include the 1,091 acres identified in*  
5           *its 1993 request to the Bureau of Reclamation.*

6           “(B) *Stanfield Irrigation District’s boundaries*  
7           *are adjusted to include the 3,549 acres identified in*  
8           *its 1993 request to the Bureau of Reclamation.*

9           “(C) *West Extension Irrigation District’s bound-*  
10          *aries are adjusted to include the 2,436.8 acres identi-*  
11          *fied in the June 1993 Bureau of Reclamation Land*  
12          *Classification Report as irrigable.*

13          “(D) *Westland Irrigation District’s boundaries*  
14          *are adjusted to include the 9,912 acres identified in*  
15          *its 1993 request to the Bureau of Reclamation.*

16          “(2) *The Secretary shall complete environmental re-*  
17          *views pursuant to this subsection no later than 6 months*  
18          *after the date of enactment of the Umatilla Basin Project*  
19          *Completion Act and at no cost to the Umatilla Basin*  
20          *Project irrigation districts.*

21          “(b) *PROVISION OF MCKAY RESERVOIR WATER FOR*  
22          *ENVIRONMENTAL ENHANCEMENT.—(1) After the boundary*  
23          *adjustments under subsection (a), the Umatilla Basin*  
24          *Project irrigation districts shall provide water for environ-*  
25          *mental enhancement from McKay Reservoir to the Sec-*

1 *retary in accordance with Option A or Option B, as speci-*  
2 *fied by the Secretary.*

3           “(2)(A)(i) *Under Option A, the irrigation dis-*  
4 *tricts shall provide storage capacity from McKay Res-*  
5 *ervoir for environmental enhancement purposes each*  
6 *year equal the applicable amount stated in clause*  
7 *(ii), or the corresponding percentage of fill as deter-*  
8 *mined by the Bureau of Reclamation, whichever is*  
9 *less.*

10           “(ii) *The applicable amounts referred to in*  
11 *clause (i) are the following:*

12                   “(I) *In 1997, 6,500 acre feet.*

13                   “(II) *In 1998, 5,500 acre feet.*

14                   “(III) *In 1999, 4,500 acre feet.*

15                   “(IV) *In 2000, 3,500 acre feet.*

16                   “(V) *In 2001, 3,000 acre feet.*

17                   “(VI) *In 2002, 3,000 acre feet.*

18           “(B) *Under Option B, the irrigation districts*  
19 *shall provide storage capacity from McKay Reservoir*  
20 *for environmental enhancement purposes, equal to*  
21 *6,500 acre feet of water or the corresponding percent-*  
22 *age of fill as determined by the Bureau of Reclama-*  
23 *tion, whichever is less, in each calendar year begin-*  
24 *ning in 1997 and ending in the year 2002: Provided,*  
25 *That the Secretary grant \$300,000 by March 1st of*

1        *each calendar year 1997 through 2002 to the*  
 2        *Westland Irrigation District of the Umatilla Project*  
 3        *for water district improvements or other uses deemed*  
 4        *appropriate by the District: Provided further, if the*  
 5        *Secretary fails to grant the \$300,000 by March 1st*  
 6        *in any calendar year between 1997 and 2002 for pur-*  
 7        *poses of this subsection the District is not required*  
 8        *to provide any water for that calendar year.*

9        *“(C) Not later than 9 months after the date of enact-*  
 10       *ment of the Umatilla Basin Project Completion Act, the*  
 11       *Secretary shall specify Option A or Option B and notify*  
 12       *the Umatilla Basin Project irrigation districts of that speci-*  
 13       *fication.*

14       *“(c) REQUIREMENTS FOR RECEIVING PROJECT*  
 15       *WATER.—Notwithstanding any other provision of this title,*  
 16       *no parcel may receive Umatilla Basin Project water unless*  
 17       *it has a valid State water right and is classified as irrigable*  
 18       *in the Bureau of Reclamation’s Land Classification Report.*

19       *“(d) PROVISION OF DESCRIPTION OF BOUNDARIES.—*  
 20       *A legal description of the irrigation district boundaries as*  
 21       *adjusted under subsection (a), including land classification*  
 22       *and project boundary maps, shall be provided as an attach-*  
 23       *ment to all 4 Umatilla Basin Project irrigation districts’*  
 24       *existing contracts.*



1       “(e) *LIMITATION ON ALTERING ABILITY TO PAY DE-*  
 2 *TERMINATION.*—No alteration in the ability to pay deter-  
 3 *mination for the Umatilla Basin Project irrigation districts*  
 4 *may be made as a result of the irrigation district boundary*  
 5 *adjustments made by subsection (a).*

6       **“SEC. 217. WATER PROTECTION AND MANAGEMENT.**

7       *“The Secretary, in cooperation with the Confederated*  
 8 *Tribes of the Umatilla Indian Reservation (hereinafter in*  
 9 *this section referred to as the ‘Tribes’), shall initiate discus-*  
 10 *sions with the State of Oregon (hereinafter in this section*  
 11 *referred to as the ‘State’) regarding the Tribes’ water claims*  
 12 *and other water needs in the Umatilla River Basin. To fa-*  
 13 *cilitate these discussions of water claims, the Secretary shall*  
 14 *do the following:*

15               *“(1) The Secretary, taking into account the fa-*  
 16 *cilities and analyses authorized by sections 215*  
 17 *through 219, shall work with the State, the Tribes, ir-*  
 18 *rigation districts, the Bonneville Power Administra-*  
 19 *tion, and the affected public to develop a water man-*  
 20 *agement plan for the Umatilla River Basin. The plan*  
 21 *shall address restoration of the Umatilla River Basin*  
 22 *anadromous fishery. The Secretary shall also develop*  
 23 *an integrated ground water/surface water model of the*  
 24 *Upper Umatilla River Basin.*

1           “(2) Within 2 years after the date of enactment  
 2           of the Umatilla Basin Project Completion Act, the  
 3           Secretary shall report to the Committee on Energy  
 4           and Natural Resources of the Senate and the Commit-  
 5           tee on Resources of the House of Representatives on  
 6           the progress of—

7                   “(A) the facilities authorized by sections  
 8                   215 through 219 of this title;

9                   “(B) the water management plan;

10                  “(C) the ground water/surface water model;  
 11                  and

12                  “(D) the status of discussions of tribal  
 13                  water claims in the Umatilla River Basin.

14   **“SEC. 218. JOINT WATER SUPPLY SYSTEM.**

15           “Effective upon the boundary adjustments under sec-  
 16           tion 216(a), the Secretary is authorized to contract with  
 17           the Tribes for the construction of a portion of an off-stream  
 18           storage reservoir of approximately 10,000 acre-feet capac-  
 19           ity, with associated works. Such authorization shall not in-  
 20           clude water treatment facilities. Such reservoir is to be lo-  
 21           cated on or adjacent to the Tribes’ reservation in Oregon:  
 22           Provided, That:

23                   “(1) The Secretary can demonstrate through ap-  
 24                   propriate feasibility level planning and environ-  
 25                   mental studies that the facility can be built in a

1 manner which conforms to all applicable Federal,  
2 State, and Tribal laws and that the project siting and  
3 construction minimizes any adverse effects on the  
4 Umatilla River fishery.

5 “(2) Diversions for storage will not reduce  
6 Umatilla River flows below the levels necessary to re-  
7 store and support the Umatilla River anadromous  
8 fishery. In diverting water for storage and operation  
9 of the reservoir, the Tribes and the city of Pendleton  
10 (hereinafter in this section referred to as the ‘City’)  
11 may agree to higher levels of protection of instream  
12 flows. The reservoir shall be filled only during periods  
13 of high flow, and in such a manner as to preserve the  
14 ecological value of high flow events in the Umatilla  
15 River, as determined by Federal, State, and tribal  
16 fishery experts.

17 “(3) The City agrees to provide up to  
18 \$16,000,000 (in addition to the \$6,500,000 authorized  
19 by section 219(4)) for the tribal share of feasibility  
20 level planning and environmental studies and to con-  
21 struct the reservoir and associated works provided for  
22 by this title. Any cost overruns beyond the  
23 \$22,500,000 estimated for the reservoir and associated  
24 works authorized by this section and section 219(4)  
25 shall be allocated 70 percent to the City and 30 per-

1       *cent to the Tribes, unless they mutually agree other-*  
2       *wise.*

3               *“(4) The City, subject to applicable Federal,*  
4       *State, and tribal laws, shall use all of its water rights*  
5       *to the Umatilla River and its tributaries with prior-*  
6       *ity dates after January 1, 1910, including those*  
7       *rights identified in Oregon Regulatory Statute*  
8       *538.450, for instream flow purposes to improve the*  
9       *Umatilla River anadromous fishery, provided that*  
10       *adequate water from the reservoir project is available*  
11       *for municipal use.*

12               *“(5) The City and the Tribes will share all oper-*  
13       *ation and maintenance costs on a pro rata basis, de-*  
14       *termined by the amount of water in the reservoir re-*  
15       *served for each government’s use, unless the City and*  
16       *the Tribes mutually agree to an alternative cost allo-*  
17       *cation.*

18               *“(6) Title to the reservoir facility will be held*  
19       *jointly in the name of the City and the United States,*  
20       *in trust for the Tribes. The Secretary may negotiate*  
21       *a contract transferring operation and maintenance*  
22       *responsibility to either the Tribes or the City, pursu-*  
23       *ant to all applicable State, Federal, and tribal law.*

24               *“(7) The Secretary may direct that funds au-*  
25       *thorized under this section be contracted to the Tribes,*

1        *under the Indian Self-Determination and Education*  
2        *Assistance Act (25 U.S.C. 450 et seq.).*

3        **“SEC. 219. AUTHORIZATION OF APPROPRIATIONS.**

4        *“Effective upon the boundary adjustments under sec-*  
5        *tion 216(a), there are authorized to be appropriated to the*  
6        *Secretary, plus or minus such amounts as may be justified*  
7        *by reason of ordinary fluctuations of applicable cost in-*  
8        *dexes, the following sums, without fiscal year limitation:*

9                *“(1) Not to exceed \$64,000,000 for feasibility*  
10        *studies, environmental studies, and construction of*  
11        *the Phase III Exchange: Provided, That all costs of*  
12        *Phase III planning and construction, including oper-*  
13        *ation and maintenance costs allocated to the mitiga-*  
14        *tion of anadromous fish species and the study author-*  
15        *ized by section 215 of this Act, shall be nonreimburs-*  
16        *able: Provided further, That not more than 25 percent*  
17        *of the amount appropriated under this paragraph*  
18        *may be expended for administrative overhead costs.*

19                *“(2) Not to exceed \$500,000 for tribal water*  
20        *claims discussions, a water management plan, and*  
21        *an integrated ground water/surface water model, as*  
22        *provided for in section 217(a).*

23                *“(3) Not to exceed \$400,000 annually for enforce-*  
24        *ment and protection of Phases I, II, and III exchange*  
25        *water for instream uses.*

1           “(4) Not to exceed \$6,500,000 for feasibility stud-  
2       ies, environmental studies, and construction of the  
3       Tribes’ portion of an off-stream storage reservoir and  
4       associated works, as authorized in section 218 of this  
5       title.”.

6   **SEC. 3. WATER RIGHTS.**

7       *In relation to the Umatilla Basin Project, nothing in*  
8   *this Act shall—*

9           (1) *impair the validity of or preempt any provi-*  
10       *sion of State law with respect to water or water*  
11       *rights, or of any interstate compact governing water*  
12       *or water rights;*

13          (2) *create a right to the diversion or use of*  
14       *water, other than—*

15               (A) *as established pursuant to the sub-*  
16       *stantive and procedural requirements of State*  
17       *law; and*

18               (B) *as recognized under State law;*

19          (3) *impair any valid water right;*

20          (4) *establish or create any water rights for any*  
21       *party; or*

22          (5) *be construed to create directly or indirectly*  
23       *an express or implied Federal reserved water right for*  
24       *any purpose.*

1 **SEC. 4. SENSE OF THE CONGRESS.**

2       *It is the sense and expectation of the Congress that con-*  
3 *struction and operation of Phase III, the perpetual oper-*  
4 *ation of the integrated Umatilla Basin Project, and the con-*  
5 *struction and operation of the Joint Water Supply System,*  
6 *as authorized in section 218 of the Umatilla Basin Project*  
7 *Act, will fulfill obligations of the Federal Government to*  
8 *provide the Confederated Tribes of the Umatilla Indian*  
9 *Reservation with water for fishery purposes in the Umatilla*  
10 *River below the mouth of McKay Creek, as recognized by*  
11 *their 1855 treaty with the United States.*